

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 236 - HB 451**

March 20, 2013

**SUMMARY OF BILL:** Requires the consideration of legal permissibility, physical possibility, financial feasibility, and maximum productive use of such property when appraising land for highest and best use. Prohibits more than 20 percent of any property condemned in the state from being leased to private companies. Prohibits land acquired by eminent domain, following a five-year period from the date of acquisition, that has not been converted to the purpose for which it was originally acquired, from being transferred to another entity that is not a public or quasi-public entity, unless the original property owner or heirs of the original owner have a right to first refusal and an opportunity to purchase the property for the same compensation that was provided for the property in the eminent domain proceeding.

**ESTIMATED FISCAL IMPACT:**

**Decrease State Revenue – Exceeds \$100,000/Recurring/Highway Fund**  
**Increase State Expenditures - \$10,000/Recurring/Highway Fund**

**Decrease Local Revenue – Exceeds \$10,000/Recurring**  
**Increase Local Expenditures – Exceeds \$10,000/Mandatory\***  
**Exceeds \$10,000/Permissive**

Assumptions:


- This bill will result in a mandatory cost applied to the permissive action of eminent domain for local governments.
- According to the Department of Transportation (TDOT), this bill will result in the Department violating federal law (23 CFR 710.401(d)) that requires any surplus right-of-way property acquired with federal-aid funds to be sold at current fair market value.
- According to TDOT, being in violation of this federal law may result in the Administrator of the Federal Highway Administration (FHWA) withholding federal funds from the state pursuant to federal law 23 CFR 1.36 until such time as the FHWA declares the state is no longer in violation of federal law.
- This bill will result in a recurring decrease in state revenue exceeding \$100,000 to the Highway Fund as a combined result of the FHWA withholding federal funds for being in violation of federal law, as well as the from the sale of surplus property, which is sold at fair market value under current law, being sold for the price paid at the time of acquisition.

- Based on information provided by TDOT, it is estimated there will be a recurring increase in state expenditures of \$10,000 from the Highway Fund for administrative costs associated with locating previous owners and heirs.
- The revenue impact of this bill on local government is dependent upon multiple unknown factors, including, but not limited to, the number of instances that local governments will be required to sell property acquired by eminent domain back to the original owner or heirs; the original price paid for the acquired property at the time of acquisition; what the property would otherwise be used for in the absence of this bill, and if sold in the absence of this bill, the price of such sale. Given the extent of unknown factors, determining a precise revenue impact to local government is difficult; however the recurring decrease in local government revenue is reasonably estimated to exceed \$10,000.
- Mandatory increase in local government expenditures associated with locating previous owners and their heirs is reasonably estimated to exceed \$10,000 per year.
- Permissive increase in local government expenditures associated with the cost for extending the definition of “highest and best use” when assessing valuation of property to be condemned is reasonably estimated to exceed \$10,000 per year.

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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